2011 IL App (1st) 100262-U

FOURTH DIVISION
November 10, 2011

No. 1-10-0262

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 07 CR 2054
	)	
MICHAEL COOPER,	)	Honorable
	)	Catherine M. Haberkorn,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Sterba concurred in the judgment.

O R D E R

¶ 1 *Held*: Trial court did not abuse its discretion in sentencing defendant to 18 years in prison for enhanced Class X offense of delivery of less than one gram of cocaine where defendant had extensive criminal record over 30-year period.

¶ 2 Following a bench trial, defendant Michael Cooper was convicted of delivery of a controlled substance (cocaine) and sentenced to 18 years in prison. On appeal, defendant challenges his sentence as well as certain fines and fees assessed against him.

¶ 3 At trial, the State's evidence established the following. On December 20, 2006, Chicago police officer Sullivan was working with a surveillance team near 911 West Wilson Avenue in

Chicago. Through his binoculars he observed defendant speaking to another man, later identified as David Brown. After a short conversation, Brown gave defendant some folded money, which defendant placed in his coat pocket. Defendant then took a white object from his mouth and gave it to Brown, who placed it in his right coat pocket. Brown began to walk away but was apprehended by Officer Rene Duran after Duran saw him reach into his right jacket pocket and throw a white object on the ground. Duran recovered a wet plastic knotted bag containing what he believed to be crack cocaine. Brown was searched and nothing else was found in his pockets.

¶ 4 Officer Michael Bartz received a description of defendant from Sullivan. Bartz stopped and searched defendant minutes after Sullivan had observed the transaction. Bartz found three $5 bills folded together in defendant's jacket pocket.

¶ 5 The parties stipulated to a chain of custody for the white object and also stipulated that Nancy McDonald, a certified chemist for the Illinois State Police Crime Lab would testify that she tested the item and found it to testify positive for cocaine. There was no stipulation as to the amount of cocaine recovered, but defendant was convicted of delivery of less than one gram of cocaine, and was sentenced to 18 years in prison.

¶ 6 Defendant contends that his sentence was excessive and that the trial judge failed to balance his rehabilitative potential with the seriousness of the crime. Trial courts have broad discretion in imposing sentence (*People v. Stacey*, 193 Ill. 2d 203, 209 (2000)) and accordingly we will accord great deference to that determination. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). The factors which should be considered include the defendant's credibility, demeanor, general moral character, habits, and age. *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977).

¶ 7 At the sentencing hearing the following information was adduced. While on bond awaiting trial for this offense, defendant was convicted of two felonies, possession of a

controlled substance and theft, in two separate counties. He was subject to mandatory class X sentencing because of 19 prior felony convictions. Eleven of these were robberies and some included aggravated batteries. He received concurrent sentences ranging from 7 to 14 years for those offenses. He had also previously been convicted of burglary, robbery, armed robbery, vehicular invasion, and aggravated unlawful restraint. His first conviction was for theft in 1980.

¶ 8 Defendant was 48 years old at the time of sentencing. He admitted to being addicted to crack cocaine since the age of 17. He was a member of a street gang, but stated that he had ceased that association five years earlier. His half-brother was a doctor at the University of Chicago Hospital and his half-sister was a nurse at Weiss Hospital. He was married, with two children by his wife, one 12 months old and the other 13 years old. However the children's mother was also incarcerated, so they were being raised by his step-daughter. He also had another son with whom he had contact by letters. He received a GED while in prison in 2002.

¶ 9 Given defendant's criminal and social history, we find no basis for disturbing the sentence imposed by the trial court. Defendant was eligible to be sentenced as a Class X offender to a term ranging from 6 to 30 years. 730 ILCS 5/5-8-1(a)(3) (West 2006). His sentence of 18 years was at the mid-point of that range. Defendant notes that he was convicted of delivering less than one gram of cocaine. Certainly the relative seriousness of the offense is a key factor to be considered. *People v. Marsan*, 238 Ill. App. 3d 470, 473 (1992). But weighed against this is over 19 instances of prior criminality and drug usage, in which serious and lengthy prison sentences seemed to have no deterrent effect. Accordingly, we find no abuse of discretion in the sentence imposed and therefore affirm it.

¶ 10 The trial court imposed a $1,500 controlled substances fine against defendant. Defendant contends, and the State concedes, that he is entitled to a credit against this fine of $5 for each day he was incarcerated while awaiting trial. 725 ILCS 5/110-14 (West 2006); *People v. Jones*, 223

Ill. 2d 569, 592 (2006). Defendant was so incarcerated for 403 days and therefore is entitled to a $2,015 credit against this fine.

¶ 11 As defendant argues, and the State concedes, the trial court erroneously imposed a $25 Violent Crime Victims Assistance Fund (VCVA) assessment against defendant. This assessment is to be imposed only when no other fine is imposed. 725 ILCS 240/10(c)(1) (West 2006). The appropriate VCVA assessment, both parties agree, is an assessment of $4 for each $40 of fines imposed or each fraction thereof. 725 ILCS 240/10(b) (West 2006). This is to be imposed when other fines are also imposed, as occurred here. However, contrary to defendant's contention, this assessment cannot be offset by sentencing credit. Accordingly, based upon $1500 in fines, defendant should be assessed $152 under this provision.

¶ 12 Finally, defendant contends and the State concedes that it was erroneous for the trial court to assess a $200 DNA analysis charge (730 ILCS 5/5-4-3(j) (West 2006) when he was previously registered in the DNA database pursuant to a prior conviction. *People v. Marshall*, 242 Ill. 2d 285, 303 (2011). Accordingly we vacate this fee.

¶ 13 In summary, we affirm defendant's 18-year prison sentence; we offset his $1,500 controlled substances fine with his $2,015 sentencing credit, thus eliminating that fine; we vacate his $25 VCVA assessment but assess him $152 pursuant to the correct section of that statute without benefit of any sentencing credit; and we vacate defendant's $200 DNA analysis fee.

¶ 14 Affirmed as modified.